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2019 SPECIAL ADMINISTRATIVE MEASURES (NEGATIVE LIST) FOR THE ACCESS OF FOREIGN INVESTMENT

On June 30, the National Development and Reform Commission (NDRC) and the Ministry of Commerce (MOFCOM) issued the Special Administrative Measures (Negative List) for the Access of Foreign Investment (2019 Edition), which will take effect from July 30, 2019.

Compared with the 2018 Edition, the 2019 edition of Special Administrative Measures (Negative List) for the Access of Foreign Investment has been streamlined to 40 items and the major changes are at below three aspects:

Firstly, to further open the service sector, including the areas such as transportation, infrastructure, culture and value-added tele-communications.

Secondly, to relax the restrictions on the access to agriculture, mining and manufacturing.

Last, to continue the role of experimental plots of the free trade zone. Performance brokers, oil and gas exploration and development and other opening-up measures which were piloted in free trade zone on the 2018 edition of negative list for foreign investment access have been rolled out nationwide. On the basis of the national opening-up measures, the 2019 edition of negative list on foreign investment access in pilot free trade zones removed restrictions on foreign investment in fishery products, publication printing and other fields, and continued to expand opening-up.

The 2019 edition of negative list simplified the restrictive items. By the end of the year, restrictive provisions on the foreign investment access which are not listed on the negative list shall be removed and consistent standards on market access will be adopted for both domestic and foreign investment.

Notes for the New Negative List (2019 Edition)

- I. The Special Administrative Measures (Negative List) for the Access of Foreign Investment (hereinafter referred to as “Negative List”) outline the special administrative measures for foreign investment access, such as equity requirements and requirements for senior management. Fields beyond the negative lists shall be administered under the principle of equal treatment to both domestic and foreign investment.
- II. The Negative List outlines the transitional periods for access restrictions to be canceled or relaxed in certain fields, at the expiry of which such restrictions shall be canceled or relaxed as scheduled.
- III. Overseas investors are prohibited to engage in investment and operation activities as individual industrial and commercial households, investor of individual proprietorship enterprises and members of specialized farmers cooperatives.
- IV. Foreign investors are not allowed to invest in any industry where foreign investment is forbidden in the Negative List for the Access of Foreign Investments. To invest in the non-prohibited industry as listed in the Negative List, permission for foreign investment access shall be granted. No foreign-invested partnership enterprise can be formed in the industry where there is equity requirement.
- V. Where domestic company, enterprise or natural person merges or acquires any affiliated domestic companies through legally established or controlled offshore companies, when foreign investment projects or enterprises establishment or alteration are involved, it shall be in compliance with the relevant provisions and regulations.
- VI. Measures in relation to culture, finance and other fields, administrative examination and approval, qualification conditions and national security which are not listed in the Negative List shall be implemented in accordance with the relevant existing provisions.
- VII. Where more preferential and opening-up measures for qualified investors are specified in the “Closer Economic Partnership Arrangement between the Mainland and Hong Kong” and its supplementary agreements, the “Closer Economic Partnership Arrangement between the Mainland and Macao” and its supplementary agreements, the “Cross-Straits Economic Cooperation Framework Agreement” and its supplementary agreements, the pilot free trade zone agreements and investment treaties concluded between China and relevant countries, the international treaties under which China is a signatory, it shall be implemented in accordance with the provisions of relevant agreements. More preferential and opening-up measures for qualified investors in special economic areas such as free trade pilot zones shall comply with relevant provisions.
- VIII. The National Development and Reform Commission (NDRC), the Ministry of Commerce (MOFCOM) and their relevant departments shall be responsible for the interpretation of the Special Administrative Measures (Negative List) for the Access of Foreign Investment.

Comparative Chart for Special Administrative Measures (Negative List) on Foreign Investment Access in China (2018 vs (2019)

Sectors	NO.	Special Administrative Measures		Changes
		2018 Edition	2019 Edition	
Agriculture, Forest, Husbandry and Fishery	1	The breeding of new species and seed production of wheat and maize must be controlled by Chinese party.	The breeding of new species and seed production of wheat and maize must be controlled by Chinese party.	
	2	It is prohibited to make investments in R&D, breeding, cultivation and production of relevant propagation materials (including superior gens in crops, husbandry and aquatic sectors) of rare or peculiar species in China.	It is prohibited to make investments in R&D, breeding, cultivation and production of relevant propagation materials (including superior gens in crops, husbandry and aquatic sectors) of rare or peculiar species in China.	
	3	It is prohibited to make investments in the selection and breeding of genetically modified Organisms (GMO) of crops, livestock and poultry and aquatic seedlings, and production of genetically modified crop seeds (seedlings).	It is prohibited to make investments in the selection and breeding of genetically modified Organisms (GMO) of crops, livestock and poultry and aquatic seedlings, and production of genetically modified crop seeds (seedlings).	
	4	Investment in fishing for aquatic products in waters under China's jurisdiction and inland waters is prohibited.	Investment in fishing for aquatic products in waters under China's jurisdiction and inland waters is prohibited.	
Mining	5	Exploration and development of petroleum and natural gas (including coalbed gas but excluding oil shale, oil sand, shale gas, etc.) is limited to equity or contractual joint ventures.		Removed
	6	Investment in prospection and exploitation of tungsten, molybdenum, tin, antimony and fluorite is prohibited.	Investment in rare earth, radioactive minerals, tungsten prospection, exploitation and mineral processing is prohibited.	Simplified
	7	Investment in rare earth prospection, exploitation and mineral processing is prohibited.		
	8	Investment in radioactive minerals prospection, exploitation and mineral processing is prohibited.		

Sectors	NO.	Special Administrative Measures		Changes
		2018 Edition	2019 Edition	
Manufacturing Industry	9	Printing of publications must be controlled by Chinese party.	Printing of publications must be controlled by Chinese party.	
	10	Investment in smelting and processing of radioactive materials as well as nuclear fuel production is prohibited.	Investment in smelting and processing of radioactive materials as well as nuclear fuel production is prohibited.	
	11	Investment in processing of Chinese medicines (through steaming, frying, moxibustion and calcination, etc.) and production of traditional Chinese medicine patent drugs with secret formulas is prohibited.	Investment in processing of Chinese medicines (through steaming, frying, moxibustion and calcination, etc.) and production of traditional Chinese medicine patent drugs with secret formulas is prohibited.	
	12	Except special purpose vehicles and new energy vehicles, for the integrated automobile manufacturing, the proportion of Chinese equity ratio shall not be less than 50% and one foreign investor can establish no more than two equity joint ventures in China to manufacture the same type of integrated automotive products. By 2020, the restriction on foreign investment in the production of commercial vehicles will be cancelled. By 2022, the restriction on the proportion of foreign investment in passenger vehicles and the limitation on the number of joint ventures shall be cancelled.	Except special purpose vehicles and new energy vehicles, the proportion of Chinese equity ratio shall not be less than 50%, one foreign investor may establish no more than two equity joint venture enterprises in China to manufacture the same type of automotive products. In 2020, the restriction on the proportion of foreign investment in commercial vehicles will be cancelled. In 2022, cancel the restriction on the proportion of foreign investment in passenger vehicles and the limitation on the number of joint ventures (no more than two joint ventures).	
	13	Manufacturing of ground satellite TV broadcast receiving facilities and key parts.	Manufacturing of ground satellite TV broadcast receiving facilities and key parts.	
	14	It is prohibited to invest in Chinese art paper and ink ingot production.		Removed
Electricity, Heating, Gas, Water Production and Supply	15	The construction and operation of nuclear power stations shall be controlled by Chinese party.	The construction and operation of nuclear power stations shall be controlled by Chinese party.	
	16	The construction and operation of gas-supply, heat-supply, water-supply and drainage pipe networks in cities with populations greater than 500,000 shall be controlled by Chinese party.	The construction and operation of water-supply and drainage pipe networks in cities with populations greater than 500,000 shall be controlled by Chinese party.	Simplified
Wholesale & Retail	17	Investment in wholesale and retail of tobacco, cigarettes, leaf tobacco and other tobacco products is prohibited.	Investment in wholesale and retail of tobacco, cigarettes, leaf tobacco and other tobacco products is prohibited.	

Sectors	NO.	Special Administrative Measures		Changes
		2018 Edition	2019 Edition	
Transport, Warehouse and Postal Service	18	Domestic waterway transport companies must be controlled by Chinese party.	Domestic waterway transport companies must be controlled by Chinese party.	
	19	Domestic shipping agents shall be controlled by the Chinese party.		Removed
	20	Public air transport companies must be controlled by the Chinese party, and the proportion of investment by a foreign company and its affiliated enterprises must not exceed 25%, and the legal representative must be a Chinese citizen.	Public air transport companies must be controlled by the Chinese party, and the proportion of investment by a foreign company and its affiliated enterprises must not exceed 25%, and the legal representative must be a Chinese citizen.	
	21	The legal representative of general aviation company shall be Chinese citizens, among which general aviation companies of agriculture, forestry and fishery are limited to joint ventures, while other general aviation companies are limited to be controlled by Chinese party.	The legal representative of general aviation company shall be Chinese citizens, among which general aviation companies of agriculture, forestry and fishery are limited to joint ventures, while other general aviation companies are limited to be controlled by Chinese party.	
	22	The construction and operation of civil airports shall be relatively controlled by Chinese party.	The construction and operation of civil airports shall be relatively controlled by Chinese party.	
	23	Investment in air traffic control companies is prohibited.	Investment in air traffic control companies is prohibited.	
	24	It is prohibited to invest in postal service companies and domestic letter delivery service.	It is prohibited to invest in postal service companies and domestic letter delivery service.	
Information Transmission, Software and Information Technology (IT) Service	25	Telecommunication companies: limited to services to be open as undertaken by WTO, for the value-added telecommunication services, the foreign investment proportion shall be not exceeding 50% (e-commerce excluded). Basic telecommunication service shall be controlled by Chinese party).	Telecommunication companies: limited to services to be open as undertaken by WTO, for the value-added telecommunication services, the foreign investment proportion shall be not exceeding 50% (e-commerce, domestic multi-party communication, storage and forwarding, and call centres are excluded). Basic telecommunication service shall be controlled by Chinese party.	Relaxed restrictions
	26	It is prohibited to invest in internet news information services, online publishing services, online audio-visual program services, internet culture operation (excluding music services) and Internet publishing information services (excluding services to be open as undertaken by WTO).	It is prohibited to invest in internet news information services, online publishing services, online audio-visual program services, internet culture operation (excluding music services) and Internet publishing information services (excluding services to be open as undertaken by WTO).	

Sectors	NO.	Special Administrative Measures		Changes
		2018 Edition	2019 Edition	
Financial Services	27	The proportion of foreign investment in securities companies and securities investment fund management companies shall not exceed 51%. (Restrictions on the proportion of foreign investment shall be cancelled in 2021).	The proportion of foreign investment in securities companies and securities investment fund management companies shall not exceed 51%. (Restrictions on the proportion of foreign investment shall be cancelled in 2021).	
	28	The proportion of foreign investment in futures companies shall not exceed 51%. (Restrictions on the proportion of foreign investment shall be cancelled in 2021).	The proportion of foreign investment in futures companies shall not exceed 51%. (Restrictions on the proportion of foreign investment shall be cancelled in 2021).	
	29	The proportion of foreign investment in life insurance companies shall not exceed 51%. (Restrictions on the proportion of foreign investment shall be cancelled in 2021).	The proportion of foreign investment in life insurance companies shall not exceed 51%. (Restrictions on the proportion of foreign investment shall be cancelled in 2021).	
Leasing and Business Service	30	It is prohibited to Invest in Chinese legal affairs (excluding providing information on the impact of the legal environment in China) and to be a partner of a domestic law firm.	It is prohibited to Invest in Chinese legal affairs (excluding providing information on the impact of the legal environment in China) and to be a partner of a domestic law firm.	
	31	Market research is limited to equity or contractual joint ventures, among which the ratings survey of radio and television must be controlled by Chinese party.	Market research is limited to equity or contractual joint ventures, among which the ratings survey of radio and television must be controlled by Chinese party.	
	32	Investment in social investigation is prohibited.	Investment in social investigation is prohibited.	
Scientific Research and Technology Service	33	It is prohibited to invest in development and application of technologies in respect human stem cells, gene diagnosis and treatment.	It is prohibited to invest in development and application of technologies in respect human stem cells, gene diagnosis and treatment.	
	34	Investment in institutes of humanities and social science is prohibited.	Investment in institutes of humanities and social science is prohibited.	
	35	It is prohibited to invest in geodetic surveying, marine charting, aerial photography for surveying and mapping, ground mobile surveying, surveying and mapping of territorial boundaries of administrative divisions, compiling topographic, world political map, national political map, political map of province level and below, national teaching map, local teaching maps, 3d map and navigation e-map compiling, regional geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters, remote sensing geological survey.	It is prohibited to invest in geodetic surveying, marine charting, aerial photography for surveying and mapping, ground mobile surveying, surveying and mapping of territorial boundaries of administrative divisions, compiling topographic, world political map, national political map, political map of province level and below, national teaching map, local teaching maps, 3d map and navigation e-map compiling, regional geological mapping, mineral geology, geophysics, geochemistry, hydrogeology, environmental geology, geological disasters, remote sensing geological survey.	

Sectors	NO.	Special Administrative Measures		Changes
		2018 Edition	2019 Edition	
Management of Water Conservancy Environment and Public Facilities	36	Investment in exploitation of wildlife animals and plants originating from China and protected by the State is prohibited.		Removed
Education	37	Preschool education, ordinary high school education and higher education institutions are limited to contractual joint ventures and dominated by Chinese party. (the principal or the principal administrator must be Chinese citizen. The proportion of Chinese members in the board of trustees, the board of directors or the joint management committee of Chinese -foreign cooperative schools shall not be less than 1/2.	Preschool education, ordinary high school education and higher education institutions are limited to contractual joint ventures and dominated by Chinese party. (the principal or the principal administrator must be Chinese citizen. The proportion of Chinese members in the board of trustees, the board of directors or the joint management committee of Chinese -foreign cooperative schools shall not be less than 1/2.	
	38	Investment in compulsory education as well as in religion educational institutes is prohibited.	Investment in compulsory education as well as in religion educational institutes is prohibited.	
Health and Social Activities	39	Investment in medical institutes is limited to equity or contractual joint ventures.	Investment in medical institutes is limited to equity or contractual joint ventures.	
Culture, Sports and Entertainment	40	Investment in news agencies (including but not limited to news service) is prohibited.	Investment in news agencies (including but not limited to news service) is prohibited.	
	41	Investment in editing, publishing and production of books, newspapers, periodicals, audio-visual products and electric publications is prohibited.	Investment in editing, publishing and production of books, newspapers, periodicals, audio-visual products and electric publications is prohibited.	
	42	It is prohibited to invest in all levels of broadcasting station, television (station), radio and television channel (rate), radio and television transmission network (transmitting station, relay station, radio and television satellites, satellite uplink station, satellite receiving station, microwave station, monitor station and cable broadcasting and television transmission network, etc.) and to engage radio, TV and video on-demand business and to install television broadcast ground satellite receiving facilities.	It is prohibited to invest in all levels of broadcasting station, television (station), radio and television channel (rate), radio and television transmission network (transmitting station, relay station, radio and television satellites, satellite uplink station, satellite receiving station, microwave station, monitor station and cable broadcasting and television transmission network, etc.) and to engage radio, TV and video on-demand business and to install television broadcast ground satellite receiving facilities.	
	43	Investment in broadcasting and television program production and operation (including imported business) is prohibited.	Investment in broadcasting and television program production and operation (including imported business) is prohibited.	

Sectors	NO.	Special Administrative Measures		Changes
		2018 Edition	2019 Edition	
Culture, Sports and Entertainment	44	The construction and operation of cinemas must be controlled by Chinese party.		Removed
	45	Investment in films-making companies, film distribution, cinema line companies as well as film introduction business is prohibited.	Investment in films-making companies, film distribution, cinema line companies as well as film introduction business is prohibited.	
	46	Investment in auction of cultural relics, cultural relic shops and state-owned cultural relic museums is prohibited.	Investment in auction of cultural relics, cultural relic shops and state-owned cultural relic museums is prohibited.	
	47	Brokering agency of stage performances must be controlled by Chinese party.		Removed
	48	Investment in literary and art troupes is prohibited.	Investment in literary and art troupes is prohibited.	

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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